

State of Montana

Department of Labor & Industry
Brian Schweitzer, Governor



Employment Relations Division

WC Claims Assistance Bureau
Claims Unit

November, 2005

TO: Attorneys, Insurers, Claims Examiners, Medical Providers and Interested Parties

RE: **First Report of Injury, release of medical information**

Thompson, et al, v. State of Montana

2005 MTWCC 53 (WCC No. 2004-1089)

Appealed to Supreme Court 05/15/2006

The Workers' Compensation Court held that section 39-71-604(3), MCA (2003), and section 50-16-527(5), MCA (2003), violate claimants' constitutional right of privacy as guaranteed by Mont. Const., Art. II, section 10, and no compelling state interest exists to justify such a violation. The Court also found that section 39-71-604(3) and section 50-16-527(5), MCA (2003), violate claimants' constitutional right to due process as guaranteed by Mont. Const., Art. II, section 17, and no rational basis exist to justify such a violation. *Thompson, et al, v. State of Montana*, 2005 MTWCC 53 (decided October 18, 2005).

In accordance with the *Thompson* decision, the Department has developed a **revised First Report of Injury or Occupational Disease Form (FROI) – available on our website, <http://erd.dli.mt.gov>, under “Features”,** with the following release statement:

"This is my claim for worker' compensation benefits due to the on-the-job injury, occupational disease, or death of the above-named worker. I understand that signing this claim for compensation authorizes the release to the workers' compensation insurer or its agent, rehabilitation records, Social Security records, and health care information (medical records, pursuant to HIPPA, Public Law 104-191, 42 USC section 1301, et. seq., and section 39-71-604, MCA) that are directly relevant to the claimed injury, disease or death. I also understand that if I obtain or exert unauthorized control over workers' compensation benefits to which I am not entitled, I may be prosecuted for theft."

The language used in the revised form reflects the practices in place prior to the 2003 amendments to sections 39-71-604(3), MCA and 50-16-527(5), MCA. The claimant's signature on the FROI authorizes the release of information "directly relevant" to the claim to the workers' compensation insurer and the insurer's agents.

The Department believes, based on its reading of the *Thompson* decision, that an insurer is not required to obtain the consent of the claimant to seek medical information or to channel all its requests through the claimant or the claimant's attorney. It requires only that claimant or the attorney be notified in advance of any interview so that he or she may be present during the interview. In the case of correspondence, it requires that the claimant or the attorney be copied with the correspondence. *Linton v. City of Great Falls*, 230 Mont. 122, 134, P.2d 55, 63 (1988). The decision can be located on our web page, <http://erd.dli.mt.gov>, under "Features".

If you have questions, please contact: Barb Gullickson (406) 444-6451.